

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

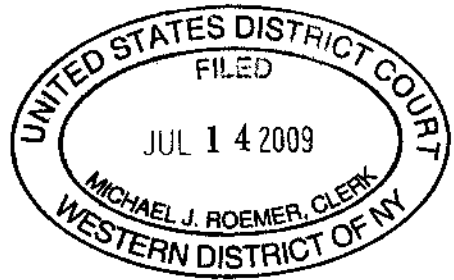
DAVID A. SMITH

Plaintiff,

v.

THOMAS W. BURNS, Individually and in  
his capacity as a Monroe County Sheriff's  
Deputy

Defendant.



05-CV-6467-CJS/MWP

ORDER

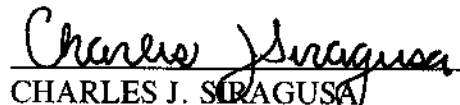
On June 2, 2009, parties were ordered to show cause why this action should not be dismissed for failure to prosecute pursuant to Rule 41.2 of the Local Rules of Civil Procedure for the Western District of New York. Neither party has responded to the order.

Dismissal of an action for failure to prosecute is within the court's discretion. Nita v. Connecticut Dep't of Environmental Protection, 16 F.3d 482, 485 (2d Cir. 1994) (citing Link v. Wabash R.R. Co., 370 U.S. 626, 633 (1962); Harding v. Federal Reserve Bank of New York, 707 F.2d 46, 50 (2d Cir. 1983)). The Second Circuit set forth the factors to be considered in dismissing a case for failure to prosecute in Alvarez v. Simmons Market Research Bureau, Inc., 839 F.2d 930, 932 (2d Cir. 1988), and reiterated these factors in LeSane v. Hall's Security Analyst, Inc., 239 F.3d 206 (2d Cir. 2001) (citing Lucas v. Miles, 84 F.3d 532, 535 (2d Cir. 1996)).

The plaintiff has not pursued this action for several months. He has failed to respond to the Court's Order to Show Cause, in which he was advised that the action may be dismissed. Inasmuch as plaintiff has demonstrated no interest in litigating his claims, the factors set forth in Lucas and Alvarez support dismissal of plaintiff's claims for failure to prosecute.

Accordingly, pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule of Civil Procedure 41.2(b), this action is dismissed. I hereby certify that any appeal from this judgment would not be taken in good faith, and deny leave to appeal as a poor person pursuant to 28 U.S.C. § 1915(a). Plaintiffs must file any notice of appeal with the Clerk's Office, United States District Court, Western District of New York, within 30 days of the date of judgment in this action. Requests to proceed on appeal as a poor person must be filed with the United States Court of Appeals for the Second Circuit in accordance with the requirements of Rule 24 of the Federal Rules of Appellate Procedure.

**IT IS SO ORDERED.**

  
CHARLES J. SIRAGUSA  
United States District Judge

Dated: July 13, 2009  
Rochester, New York